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STEPHEN D. RICHMOND, Appellant)	
)	
and)	Docket No. 05-891
)	Issued: July 22, 2005
GOVERNMENT PRINTING OFFICE, RAPID)	
RESPONSE CENTER, Washington, DC,)	
Employer)	
)	

Case Submitted on the Record

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

On March 8, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated December 17, 2004, finding that appellant did not have more than a 24 percent permanent impairment to his left leg. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

The issue is whether appellant has more than a 24 percent permanent impairment to his left leg, for which he received a schedule award.

On January 5, 1990 appellant, then a 40-year-old machinist, filed a traumatic injury claim (Form CA-1) alleging that he sustained back and leg injuries while loosening a bolt. The Office accepted the claim for low back sprain/strain, lumbar disc syndrome and herniated nucleus

pulposus L5-S1. Appellant returned to work on March 19, 1990 and had intermittent disability. He underwent lumbar surgery in January 1993.

In a report dated June 2, 2000, Dr. Clifford Hinkes, an orthopedic surgeon, indicated that appellant was still having back pain and mild sciatica. He opined that appellant had a 25 percent whole body impairment under the fourth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*. In a form report (CA-1303) dated August 9, 2000, Dr. Hinkes found that appellant had a 32 percent leg impairment due to sensory deficit or pain and 32 percent for loss of strength.

An Office medical adviser reviewed the medical evidence and opined in a September 13, 2000 report that appellant had a five percent permanent impairment for S1 pain or sensory deficit under the A.M.A., *Guides*. The record indicates that the Office issued a payment dated October 27, 2000 for the period June 2 to September 10, 2000, representing a 5 percent leg impairment or 14.4 weeks of compensation.

The Office found a conflict in the medical evidence and referred medical records, along with a statement of accepted facts, to Dr. Roger Raiford, a Board-certified orthopedic surgeon, to resolve the conflict. In a report dated March 19, 2001, Dr. Raiford provided a history and results on examination. He opined that, under Table 83 of the fourth edition of the A.M.A., *Guides*, appellant had a 5 percent leg impairment for pain/sensory deficit, and 20 percent for loss of strength, resulting in a combined 24 percent leg impairment.

By decision dated April 23, 2001, the Office issued a schedule award for an additional 19 percent permanent impairment to the left leg. The period of the award was 54.72 weeks from September 11, 2000.

On May 5, 2004 appellant submitted an April 12, 2004 report from Dr. Hinkes, who provided results on examination and stated that appellant was having back pain and mild left sciatica. He opined that appellant had a 33 percent whole body impairment. The Office referred the case to an Office medical adviser for an opinion as to whether appellant had an additional impairment to his left leg. The Office stated that appellant had received a schedule award for a 19 percent permanent impairment. In a report dated June 15, 2004, an Office medical adviser opined that Dr. Hinkes failed to properly cite the A.M.A., *Guides* and there was no evidence of an increased impairment.

The Office then referred appellant, a statement of accepted facts and medical records to Dr. Robert Draper, a Board-certified orthopedic surgeon. The Office indicated that appellant had actually received a schedule award totaling 24 percent left leg impairment. By report dated August 19, 2004, Dr. Draper provided a history and results on examination. He diagnosed disc herniation L5-S1, status post lumbar discectomy and L5 radiculopathy. Dr. Draper found that appellant had a 1 percent impairment for L5 sensory deficit or pain, based on Table 15-18 and a graded impairment of 20 percent of the maximum under Table 15-15. For motor deficit, Dr. Draper found that appellant had a 7 percent impairment, based on Table 15-18 and a graded impairment of 20 percent of the maximum 37 percent for the L5 nerve root. He concluded that appellant currently had an eight percent left leg impairment under the A.M.A., *Guides*.

By decision dated September 15, 2004, the Office found that appellant was not entitled to an additional schedule award based on the medical evidence. Appellant requested reconsideration and submitted an October 11, 2004 report from Dr. Hinkes who stated that, both the S1 and L5 nerves were affected, and that grading the impairment at 25 percent of the maximum for both sensory deficit/pain and loss of strength, appellant would have a 17 percent leg impairment under the A.M.A., *Guides*. Dr. Hinkes stated that this was “obviously too low to represent a valid impairment for a working man who has undergone a lumbar laminectomy and dis[c]ectomy with persistent sciatica.” He indicated that state law would provide for a greater impairment and opined that a 33 percent whole body impairment was reasonable, in accord with the fourth edition of the A.M.A., *Guides*, which would correspond to approximately 50 percent impairment of the spinal nerves.

By decision dated December 17, 2004, the Office denied modification of the September 15, 2004 decision.

LEGAL PRECEDENT

Section 8107 of the Federal Employees’ Compensation Act provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.¹ Neither the Act nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants the Office has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.² As of February 1, 2001, the fifth edition of the A.M.A., *Guides* was to be used to calculate schedule awards.³

ANALYSIS

In the present case, appellant has received 69.12 weeks of compensation representing a 24 percent permanent impairment to his left leg.⁴ He has requested an additional schedule award based on evidence from his attending physician, Dr. Hinkes. The probative medical evidence does not, however, establish more than a 24 percent left leg impairment.

The second opinion physician, Dr. Draper, provided a reasoned opinion on August 19, 2004 that appellant had an eight percent left leg impairment. He identified Table 15-18, which provides a maximum of 5 percent for sensory deficit/pain for the L5 nerve root, and a maximum

¹ 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.404(a).

² A. George Lampo, 45 ECAB 441 (1994).

³ FECA Bulletin No. 01-05 (issued January 29, 2001).

⁴ The maximum number of weeks of compensation for the leg is 288; 24 percent is 69.12 weeks. See 5 U.S.C. § 8107(c)(2).

37 percent for loss of strength.⁵ The impairment for sensory deficit/pain is graded according to Table 15-15, and the impairment for loss of strength is graded under Table 15-16.⁶ Dr. Draper graded the impairments at 20 percent of the maximum, for a 1 percent sensory deficit/pain impairment and a 7 percent impairment for loss of strength, resulting in an 8 percent leg impairment.

Dr. Hinkes found that the L5 and S1 nerve roots were involved, and he graded the impairments at 25 percent of the maximum. For the S1 nerve root, the maximum impairment for sensory deficit/pain is 5 percent, and for loss of strength 20 percent.⁷ Dr. Hinkes concluded that appellant had a 17 percent leg impairment. Although he stated that he did not feel this adequately represented the impairment, schedule awards under the Act are based on the fifth edition of the A.M.A., *Guides* for impairments to scheduled members of the body. Dr. Hinkes referred to whole body impairment, which is not appropriate under the Act.⁸

The probative medical evidence does not establish that appellant has more than a 24 percent permanent impairment to his left leg. Dr. Draper found that appellant had an 8 percent leg impairment, while Dr. Hinkes indicated that appellant had a 17 percent leg impairment under the current edition of the A.M.A., *Guides*. Based on the evidence of record, the Office properly denied appellant's request for an additional schedule award.

CONCLUSION

The Board finds that the medical evidence does not establish more than a 24 percent permanent impairment to appellant's left leg, for which he received a schedule award.

⁵ A.M.A., *Guides* at 424, Table 15-18.

⁶ *Id.* at 424, Tables 15-15, 15-16.

⁷ *Id.* at 424, Table 15-18.

⁸ The Board notes that the Act does not provide for permanent impairment to the whole person. *Janae J. Triplette*, 54 ECAB ____ (Docket No. 03-1545, issued September 4, 2003).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated December 17 and September 15, 2004 are affirmed.

Issued: July 22, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board